

COTTONWOOD HEIGHTS

RESOLUTION NO. 2012-33

A RESOLUTION APPROVING ENTRY INTO A VEHICLE REPURCHASE OPTION AGREEMENT WITH GARFF ENTERPRISES, INC. FOR POLICE VEHICLES AND ASSOCIATED EQUIPMENT

WHEREAS, the city of Cottonwood Heights (“City”) formed the Cottonwood Heights Police Department (the “CHPD”) to provide law enforcement within City, and desires to provide vehicles and associated equipment (collectively, the “Vehicles”) for the CHPD’s use in performing that essential governmental function; and

WHEREAS, City desires to lease (rather than purchase) the Vehicles and have the option to rotate the Vehicles every two years to better assure dependability and reduced maintenance costs; and

WHEREAS, Zions First National Bank (“Zions Bank”) has proposed to lease the Vehicles to City for a two-year term under that certain “Government Lease-Purchase Agreement” (the “Lease”) between Zions Bank, as lessor, and City, as lessee. The Lease effectively will result in the City’s purchase of the Vehicles upon expiration of the Lease, likely between 1 July 2014-1 September 2014 (the “Repurchase Date”); and

WHEREAS, Garff Enterprises, Inc. (“Garff”) owns one or more new motor vehicle dealerships and desires to supply the Vehicles to Zions Bank for City’s ultimate use under the Lease; and

WHEREAS, City is willing to enter into the Lease only if, *inter alia*, Zions Bank irrevocably agrees to purchase the Vehicles from Garff, and Garff irrevocably agrees to repurchase from Zions Bank or City, as applicable, upon termination of the Lease, such of the Vehicles as City designates, on the terms and conditions specified in a certain “Vehicle Repurchase Option Agreement” (the “Repurchase Agreement”) contemplated between City and Garff; and

WHEREAS, Garff has expressed its willingness to enter into and perform under the Repurchase Agreement in order to induce City to enter into the Lease with Zions Bank, and thereby to induce Zions Bank to purchase the Vehicles from Garff for lease to the City; and

WHEREAS, City’s municipal council (the “Council”) met in regular session on 10 July 2012 to consider, among other things, approving City’s entry into the Repurchase Agreement; and

WHEREAS, the Council has reviewed the form of the Repurchase Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of City and its efficient administration, and the health, safety and welfare of City's residents, to approve City's entry into the Repurchase Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of the city of Cottonwood Heights as follows:

Section 1. **Approval of Repurchase Agreement.** The form, terms and provisions of the Repurchase Agreement are hereby approved in substantially the form attached to this Resolution, with such insertions, omissions and changes as shall be approved by City's mayor in consultation with City's manager and attorney. The execution of the Repurchase Agreement shall be conclusive evidence of such approval, and City's mayor and recorder are hereby authorized and directed to execute and deliver the Repurchase Agreement on City's behalf to the other parties thereto.

Section 2. **Other Actions Authorized.** City's officers and employees shall take all actions necessary or reasonably required to carry out, give effect to and consummate the transactions contemplated thereby, including, without limitation, the execution and delivery of any and all other documents required to be delivered in connection with the Repurchase Agreement.

Section 3. **Appointment of Authorized Representatives.** City's manager and the manager's designee in writing from time to time are hereby designated to act as authorized representatives of City for purposes of the Repurchase Agreement until such time as the Council designates any other or different authorized representative(s) for purposes of the Repurchase Agreement.

Section 4. **Severability.** If any section, paragraph, clause or provision of this resolution (this "*Resolution*") shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, or provision shall not affect any of the remaining provisions of this Resolution.

Section 5. **Repealer.** All orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any order, resolution or ordinance or part thereof.

This Resolution, assigned no. 2012-33, shall take effect immediately upon passage.

PASSED AND APPROVED this 10th day of July 2012.

COTTONWOOD HEIGHTS CITY COUNCIL



Linda W. Dunlavy
Linda W. Dunlavy, Recorder

By Kelvin H. Cullimore, Jr.
Kelvin H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken <i>Absent</i>	Yea <input type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 10th day of July 2012.

RECORDED this 11 day of July 2012.

581467.1

Vehicle Repurchase Option Agreement

THIS VEHICLE REPURCHASE OPTION AGREEMENT (this "*Agreement*") is made effective 17 July 2012 between the city of **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("*City*"), and **GARFF ENTERPRISES, INC.**, a Utah corporation whose address 405 South Main Street, Suite 1200, Salt Lake City, UT 84111 ("*Garff*").

RECITALS:

A. City is in the process of re-outfitting its police department (the "*CHPD*") with approximately 40 motor vehicles for use by CHPD officers and employees, which vehicles are particularly described on the attached exhibit. The vehicles so described, together with any other mutually-agreed additions to such list, are called the "*Vehicles*" in this Agreement.

B. City desires to lease (rather than purchase) the Vehicles and the option to rotate the Vehicles every two years to better assure dependability and reduced maintenance costs.

C. Zions First National Bank ("*Lessor*") has proposed to lease the Vehicles to City for a two- year term under that certain "Government Lease-Purchase Agreement" (the "*Lease*") to be dated 17 July 2012 between Lessor, as lessor, and City, as lessee. The Lease effectively will result in the City's purchase of the Vehicles upon expiration of the Lease, likely between 1 July 2014-1 September 2014 (the "*Repurchase Date*").

D. Garff owns one or more new motor vehicle dealerships and desires to supply the Vehicles to Lessor for City's ultimate use.

E. City is willing to enter into the Lease only if, *inter alia*, (1) Lessor irrevocably agrees to initially purchase the Vehicles from Garff, and (2) Garff irrevocably agrees to repurchase from Lessor (or from City, if required by the Lease) such of the Vehicles as City designates, at City's option, for the Repurchase Price (defined below) on the Repurchase Date.

F. To induce City to enter into the Lease with Lessor, and to induce Lessor to thereupon purchase the Vehicles from Garff, Garff desires to irrevocably agree to repurchase such of the Vehicles as City designates, at City's option, for the Repurchase Price on the Repurchase Date as specified in this Agreement.

G. The parties desire to set forth herein their entire agreement concerning the repurchase of the Vehicles and all related dealings between City and Garff. This Agreement shall supersede all prior negotiations or agreements between the parties, oral and/or written, concerning the subject matter of this Agreement.

A G R E E M E N T:

NOW, THEREFORE, in consideration of the premises, the mutual covenants and undertakings of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. **Vehicles.** City hereby irrevocably agrees (a) to cause Lessor to purchase from Garff or its affiliated dealership(s) the Vehicles specified on the attached exhibit (as the same may be amended from time to time), and (b) to lease the Vehicles from Lessor as specified in the Lease.

Section 2. **Duty to Repurchase.** To induce City to act as provided in section 1 above, Garff hereby irrevocably agrees to repurchase from Lessor, City or any other seller under the Lease such of the Vehicles as City designates, at City's option, on or after (as designated by City) the Repurchase Date, subject to the following requirements:

(a) **Vehicles Repurchased.** The Vehicles to be repurchased to Garff hereunder shall be those Vehicles designated by City, at City's option, from time to time, which may include none, some or all of the Vehicles identified on the attached exhibit.

(b) **Purchase Price.** The Repurchase Price to be paid by Garff for all of the Vehicles totals \$_____. If City elects to require Garff to repurchase less than all of the Vehicles, then the total Repurchase Price to be paid by Garff shall be appropriately reduced by agreement of City and Garff in connection with closing of Garff's repurchase from City of the balance of the Vehicles.

(c) **Mileage.** If a Vehicle has over 36,000 odometer miles, the Repurchase Price for that Vehicle shall be reduced by a charge of twenty cents (\$.20) per excess mile.

(d) **Condition.** Each Vehicle shall be in condition to pass standard Utah State motor vehicle safety and emissions inspections of the type annually required for each registered motor vehicle. City may, at its option and cost, obtain and supply such current inspections to Garff on the Repurchase Date. City shall be responsible for repairing, at City's cost, any defects caused by City's use of a Vehicle which prevent the Vehicle from passing such inspections.

(e) **Equipment.** Each Vehicle shall be surrendered by City with (i) all equipment that was installed upon original deliver to City attached and in good working condition, and (ii) all other equipment (including decals) removed.

(f) **Body/Glass Damage.** Body damage to a Vehicle (except for reasonable wear), excessive holes not attributable to equipment installations previously agreed to by Garff, and broken or chipped glass shall be repaired at City's cost.

(g) **Closing.** Closing of Garff's repurchase of Vehicles hereunder shall be at such time, on such date, and at such place in Salt Lake County, Utah as City may specify upon at least five business days' prior notice to Garff.

Section 3. **Possible Future Lease.** Upon termination and satisfaction of the Lease, Garff and City may elect to enter into a new lease/re-purchase transaction with Lessor (or another lessor) to provide a new pool of vehicles for the CHPD on such terms and conditions as may be mutually agreed by such parties at that time, the parties acknowledging that pricing may be affected by factors such as then-current interest rates and intervening variances in the cost of vehicles and equipment.

Section 4. **Condition Precedent.** The performance of each party's obligations hereunder is conditioned on full execution and delivery of the Lease by City and Lessor effectively contemporaneously herewith.

Section 5. **City's Representations and Warranties.** City hereby represents and warrants to Garff as follows, and covenants that the same are true and accurate as of the date hereof:

(a) **Status.** City is a Utah municipality that is duly organized, validly existing and in good standing. City is empowered by applicable law, and by resolution of its city council, to enter into and perform under this Agreement.

(b) **Binding Agreement.** Upon its full execution and delivery, this Agreement and the obligations contemplated herein shall be legal, valid and binding obligations of City and shall be enforceable against City in accordance with their respective terms.

(c) **Other Agreements.** The execution and delivery of this Agreement and the consummation of the transactions provided for herein will not result in a breach of or constitute a default under any agreement or instrument to which City is a party or by which City is bound, in a manner which would impair the consummation of this Agreement or the performance of City's obligations hereunder.

(d) **Suits and Proceedings.** There are no suits or proceedings pending or threatened in any court or before any administrative board, commission, or by any federal, state or other governmental department or agency, which directly or indirectly affect or involve City and which, if determined adversely, would have an adverse effect on the transactions contemplated by this Agreement.

(e) **Third Party Approvals.** Except as otherwise specified herein, no consents or approvals of any third party or parties are required prior to the execution, delivery and performance by City of this Agreement and any other documents contemplated hereby.

Section 6. **Garff's Representations and Warranties.** Garff hereby represents and warrants to City as follows, and covenants that the same are true and accurate as of the date hereof:

(a) **Status.** Garff is a Utah corporation that is duly organized, validly existing and in good standing. Garff is empowered by applicable law and corporate approvals to enter into and perform under this Agreement.

(b) *Binding Agreement*. Upon its full execution and delivery, this Agreement and the obligations contemplated herein shall be legal, valid and binding obligations of Garff and shall be enforceable against Garff in accordance with their respective terms.

(c) *Other Agreements*. The execution and delivery of this Agreement and the consummation of the transactions provided for herein will not result in a breach of or constitute a default under any agreement or instrument to which Garff is a party or by which Garff is bound, in a manner which would impair the consummation of this Agreement or the performance of Garff's obligations hereunder.

(d) *Suits and Proceedings*. There are no suits or proceedings pending or threatened in any court or before any administrative board, commission, or by any federal, state or other governmental department or agency, which directly or indirectly affect or involve Garff and which, if determined adversely, would have an adverse effect on the transactions contemplated by this Agreement.

(e) *Third Party Approvals*. Except as otherwise specified herein, no consents or approvals of any third party or parties are required prior to the execution, delivery and performance by Garff of this Agreement and any other documents contemplated hereby.

Section 7. **Default**. If either party fails to perform any of its obligations hereunder and such condition is not cured within ten days after written notice thereof by the other, such party shall be in default hereunder and the non-defaulting party shall be entitled to proceed at law and in equity to enforce its rights under this Agreement.

Section 8. **Indemnity**. City is a governmental entity under the "Governmental Immunity Act of Utah" (UTAH CODE ANN. §63G-7-101, *et seq.*) (as amended from time to time, the "*Immunity Act*"). Consistent with the terms of the Immunity Act, and as provided herein, it is mutually agreed that each of the parties is responsible and liable for its own wrongful or negligent acts which are committed by it or by its agents, officials, or employees. Neither party waives any defenses or claims otherwise available under the Immunity Act nor does any party waive any limits of liability now or hereafter provided by the Immunity Act.

Section 9. **Additional Provisions**. The following provisions also are integral to this Agreement:

(a) *Survival of Representations and Warranties*. The respective obligations of the parties made in this Agreement, all exhibits hereto, and all certificates and documents delivered pursuant hereto, shall survive any closings contemplated by this Agreement.

(b) *Binding Agreement*. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(c) *Captions*. The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the

meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(d) Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(e) Severability. The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(f) Waiver of Breach. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement.

(g) Cumulative Remedies. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law.

(h) Amendment. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(i) Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

(j) Attorneys' Fees. In the event any action or proceeding is taken or brought by either party concerning this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy or insolvency proceeding.

(k) Notice. All notices provided for herein shall be in writing and shall be given by first class mail, certified or registered, postage prepaid, addressed to the parties at their respective addresses set forth above or at such other address(es) as may be designated by a party from time to time in writing.

(l) Brokers. Garff represents and warrants to City that no broker or finder acted for it or is entitled to any fee or commission in respect of the transactions contemplated hereby. Garff shall indemnify and hold City harmless in respect of any breach of the foregoing representation and warranty. Similarly, City represents and warrants to Garff that no broker or finder acted for City or is entitled to any fee or commission in respect of the transactions contemplated hereby. City shall indemnify and hold Garff harmless in respect of any breach of the foregoing representation and warranty.

(m) Time of Essence. Time is the essence of this Agreement.

(n) Costs. All costs and expenses, including attorneys' fees, incurred by each party in conjunction with this Agreement shall be paid by the party that incurred such costs and expenses.

(o) Assignment. Neither Garff nor City may assign its rights, or delegate its duties, under this Agreement to any third party without the prior written consent of City or Garff, as applicable. Any purported assignment without such consent shall be void from inception. Further, an approved assignment shall not effect any release of the assignor without a specific written acknowledgment of such release signed by the non-assigning party.

DATED effective the date first written above.

CITY:

ATTEST:

COTTONWOOD HEIGHTS, a Utah municipality

By: _____
Linda W. Dunlavy, Recorder

By: _____
Kelvyn H. Cullimore, Jr., Mayor

GARFF:

GARFF ENTERPRISES, INC., a Utah corporation

By: _____
_____, _____

Exhibit to
Vehicle Repurchase Option Agreement

(Insert Detailed Description of Vehicles, by Make, Model and Serial Number,
Including Description of Supplied Equipment)